

(3) Relying on the marketplace as generally the best regulator of economic activity; and

(4) Encouraging healthy competition to promote efficiency and better service to customers.

(f) *Procedures*—(1) *General*. Except as provided in paragraph (f)(2) of this section, each national bank proposing to establish a branch shall submit to the appropriate district office a separate application for each proposed branch.

(2) *Messenger services*. A national bank may request approval, through a single application, for multiple messenger services to serve the same general geographic area. (See 12 CFR 7.1012). Unless otherwise required by law, the bank need not list the specific locations to be served.

(3) *Jointly established branches*. If a national bank proposes to establish a branch jointly with one or more national banks or depository institutions, only one of the national banks must submit a branch application. The national bank submitting the application may act as agent for all national banks in the group of depository institutions proposing to share the branch. The application must include the name and main office address of each national bank in the group.

(4) *Authorization*. The OCC authorizes operation of the branch when all requirements and conditions for opening are satisfied.

(5) *Expedited review*. An application submitted by an eligible bank to establish or relocate a branch is deemed approved by the OCC as of the 15th day after the close of the applicable public comment period, or the 45th day after the filing is received by the OCC, whichever is later, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application to establish or relocate more than one branch is deemed approved by the OCC as of the 15th day after the close of the last public comment period.

(g) *Interstate branches*. A national bank that seeks to establish and operate a de novo branch in any state other than the bank's home state or a state in which the bank already has a branch

shall satisfy the standards and requirements of 12 U.S.C. 36(g).

(h) *Exceptions to rules of general applicability*. (1) A national bank filing an application for a mobile branch or messenger service branch shall publish a public notice, as described in § 5.8, in the communities in which the bank proposes to engage in business.

(2) The comment period on an application to engage in a short-distance branch relocation is 15 days.

(3) The OCC may waive or reduce the public notice and comment period, as appropriate, with respect to an application to establish a branch to restore banking services to a community affected by a disaster or to temporarily replace banking facilities where, because of an emergency, the bank cannot provide services or must curtail banking services.

(4) The OCC may waive or reduce the public notice and comment period, as appropriate, for an application by a national bank with a CRA rating of Satisfactory or better to establish a temporary branch which, if it were established by a state bank to operate in the manner proposed, would be permissible under state law without state approval.

(i) *Expiration of approval*. Approval expires if a branch has not commenced business within 18 months after the date of approval.

(j) *Branch closings*. A national bank shall comply with the requirements of 12 U.S.C. 1831r-1 with respect to procedures for branch closings.

### § 5.33 Business combinations.

(a) *Authority*. 12 U.S.C. 24(Seventh), 93a, 181, 214a, 215, 215a, 215a-1, 215c, 1815(d)(3), 1828(c), 2903, and Sec. 102, Pub. L. 103-328, 108 Stat. 2338.

(b) *Licensing requirements*. A national bank shall submit an application and obtain prior OCC approval for a business combination between the national bank and another depository institution when the resulting institution is a national bank. A national bank shall give notice to the OCC prior to engaging in a combination where the resulting institution will not be a national bank.

(c) *Scope*. This section sets forth the standards for OCC review and approval

of an application for a business combination resulting in a national bank and for notices and other procedures for national banks involved in all forms of combinations.

(d) *Definitions*—(1) *Business combination* means any merger or consolidation between a national bank and one or more depository institutions in which the resulting institution is a national bank, the acquisition by a national bank of all, or substantially all, of the assets of another depository institution, or the assumption by a national bank of deposit liabilities of another depository institution.

(2) *Business reorganization means either:*

(i) A business combination between eligible banks, or between an eligible bank and an eligible depository institution, that are controlled by the same holding company or that will be controlled by the same holding company prior to the date of the combination; or

(ii) A business combination between an eligible bank and an interim bank chartered in a transaction in which a person or group of persons exchanges its shares of the eligible bank for shares of a newly formed holding company and receives after the transaction substantially the same proportional share interest in the holding company as it held in the eligible bank (except for changes in interests resulting from the exercise of dissenters' rights), and the reorganization involves no other transactions involving the bank.

(3) *Home state* means, with respect to a national bank, the state in which the main office of the bank is located and, with respect to a state bank, the state by which the bank is chartered.

(4) *Interim bank* means a national bank that does not operate independently but exists solely as a vehicle to accomplish a business combination.

(e) *Policy*—(1) *Factors*. The OCC considers the following factors in evaluating an application for a business combination:

(i) *Competition*. (A) The OCC considers the effect of a proposed business combination on competition. The applicant shall provide a competitive analysis of the transaction, including a definition of the relevant geographic market or markets. An applicant may refer to the

Manual for procedures to expedite its competitive analysis.

(B) The OCC will deny an application for a business combination if the combination would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the business of banking in any part of the United States. The OCC also will deny any proposed business combination whose effect in any section of the United States may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the probable effects of the transaction in meeting the convenience and needs of the community clearly outweigh the anticompetitive effects of the transaction. For purposes of weighing against anticompetitive effects, a business combination may have favorable effects in meeting the convenience and needs of the community if the depository institution being acquired has limited long-term prospects, or if the resulting national bank will provide significantly improved, additional, or less costly services to the community.

(ii) *Financial and managerial resources and future prospects*. The OCC considers the financial and managerial resources and future prospects of the existing or proposed institutions.

(iii) *Convenience and needs of community*. The OCC considers the probable effects of the business combination on the convenience and needs of the community served. The applicant shall describe these effects in its application, including any planned office closings or reductions in services following the business combination and the likely impact on the community. The OCC also considers additional relevant factors, including the resulting national bank's ability and plans to provide expanded or less costly services to the community.

(iv) *Community reinvestment*. The OCC considers the performance of the applicant and the other depository institutions involved in the business combination in helping to meet the credit needs of the relevant communities, including low- and moderate-income neighborhoods, consistent with safe and sound banking practices.

(2) *Acquisition and retention of branches.* An applicant shall disclose the location of any branch it will acquire and retain in a business combination. The OCC considers the acquisition and retention of a branch under the standards set out in § 5.30, but it does not require a separate application under § 5.30.

(3) *Subsidiaries.* (i) An applicant shall identify any subsidiary to be acquired in a business combination and state the activities of each subsidiary. The OCC does not require a separate application under § 5.34.

(ii) An applicant proposing to acquire, through a business combination, a subsidiary of a depository institution other than a national bank shall provide the same information and analysis of the subsidiary's activities that would be required if the applicant were establishing the subsidiary pursuant to § 5.34.

(4) *Interim bank*—(i) *Application.* An applicant for a business combination that plans to use an interim bank to accomplish the transaction shall file an application to organize an interim bank as part of the application for the related business combination.

(ii) *Conditional approval.* The OCC grants conditional approval to form an interim bank when it acknowledges receipt of the application for the related business combination.

(iii) *Corporate status.* An interim bank becomes a legal entity and may enter into legally valid agreements when it has filed, and the OCC has accepted, the interim bank's duly executed articles of association and organization certificate. OCC acceptance occurs:

(A) On the date the OCC advises the interim bank that its articles of association and organization certificate are acceptable; or

(B) On the date the interim bank files articles of association and an organization certificate that conform to the form for those documents provided by the OCC in the Manual.

(iv) *Other corporate procedures.* An applicant should consult the Manual to determine what other information is necessary to complete the chartering of the interim bank as a national bank.

(5) *Nonconforming assets.* An applicant shall identify any nonconforming ac-

tivities and assets, including nonconforming subsidiaries, of other institutions involved in the business combination, that will not be disposed of or discontinued prior to consummation of the transaction. The OCC generally requires a national bank to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable time following the business combination.

(6) *Fiduciary powers.* An applicant shall state whether the resulting bank intends to exercise fiduciary powers pursuant to § 5.26(b) (1) or (2).

(7) *Expiration of approval.* Approval of a business combination, and conditional approval to form an interim bank charter, if applicable, expires if the business combination is not consummated within one year after the date of OCC approval.

(8) *Adequacy of disclosure.* (i) An applicant shall inform shareholders of all material aspects of a business combination and shall comply with any applicable requirements of the Federal securities laws and securities regulations of the OCC. Accordingly, an applicant shall ensure that all proxy and information statements prepared in connection with a business combination do not contain any untrue or misleading statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

(ii) A national bank applicant with one or more classes of securities subject to the registration provisions of section 12 (b) or (g) of the Securities Exchange Act of 1934, 15 U.S.C. 78l(b) or 78l(g), shall file preliminary proxy material or information statements for review with the Director, Securities and Corporate Practices Division, OCC, Washington, DC 20219, and with the appropriate district office. Any other applicant shall submit the proxy materials or information statements it uses in connection with the combination to the appropriate district office no later than when the materials are sent to the shareholders.

(f) *Exceptions to rules of general applicability*—(1) *National bank applicant.* Section 5.8 (a) through (c) does not

apply to a national bank applicant that is subject to specific statutory notice requirements for a business combination. A national bank applicant shall follow, as applicable, the public notice requirements contained in 12 U.S.C. 1828(c)(3) (business combinations), 12 U.S.C. 215(a) (consolidation under a national bank charter), 12 U.S.C. 215a(a)(2) (merger under a national bank charter), and paragraph (g) of this section (merger or consolidation with a Federal savings association resulting in a state bank).

(2) *Interim bank.* Sections 5.8, 5.10, and 5.11 do not apply to an application to organize an interim bank. However, if the OCC concludes that an application presents significant and novel policy, supervisory, or legal issues, the OCC may determine that any or all parts of §§ 5.8, 5.10, and 5.11 apply. The OCC treats an application to organize an interim bank as part of the related application to engage in a business combination and does not require a separate public notice and public comment process.

(3) *State bank or Federal savings association as resulting institution.* Sections 5.2 and 5.5 through 5.13 do not apply to transactions covered by paragraph (g)(3) of this section.

(g) *Approval procedures and treatment of dissenting shareholders in consolidations and mergers—*(1) *Consolidations and mergers with other national banks and state banks as defined in 12 U.S.C. 215b(1) resulting in a national bank.* A national bank entering into a consolidation or merger authorized pursuant to 12 U.S.C. 215 or 215a, respectively, is subject to the approval procedures and requirements with respect to treatment of dissenting shareholders set forth in those provisions.

(2) *Consolidations and mergers with Federal savings associations under 12 U.S.C. 215c resulting in a national bank.* (i) With the approval of the OCC, any national bank and any Federal savings association may consolidate or merge with a national bank as the resulting institution by complying with the following procedures:

(A) A national bank entering into the consolidation or merger shall follow the procedures of 12 U.S.C. 215 or 215a, respectively, as if the Federal savings

association were a state or national bank.

(B) A Federal savings association entering into the consolidation or merger also shall follow the procedures of 12 U.S.C. 215 or 215a, respectively, as if the Federal savings association were a state bank or national bank, except where the laws or regulations governing Federal savings associations specifically provide otherwise.

(ii) The OCC may conduct an appraisal or reappraisal of dissenters' shares of stock in a national bank involved in a consolidation or merger with a Federal savings association if all parties agree that the determination is final and binding on each party.

(3) *Merger or consolidation of a national bank resulting in a state bank as defined in 12 U.S.C. 214(a) or a Federal savings association—*(i) *Policy.* Prior OCC approval is not required for the merger or consolidation of a national bank with a state bank or Federal savings association when the resulting institution will be a state bank or Federal savings association. Termination of a national bank's status as a national banking association is automatic upon completion of the requirements of 12 U.S.C. 214a, in accordance with 12 U.S.C. 214c, in the case of a merger or consolidation when the resulting institution is a state bank, or paragraph (g)(3)(iii) of this section, in the case of a merger or consolidation when the resulting institution is a Federal savings association, and consummation of the transaction.

(ii) *Procedures.* A national bank desiring to merge or consolidate with a state bank or a Federal savings association when the resulting institution will be a state bank or Federal savings association shall submit a notice to the appropriate district office advising of its intention. The national bank shall submit this notice at the time the application to merge or consolidate is filed with the responsible agency under the Bank Merger Act, 12 U.S.C. 1828(c). The OCC then provides instructions to the national bank for terminating its status as a national bank, including requiring the bank to provide the appropriate district office with the bank's charter (or a copy) in connection with the consummation of the transaction.

(iii) *Special procedures for merger or consolidation into a Federal savings association.* (A) With the exception of the procedures in paragraph (g)(3)(iii)(B) of this section, a national bank entering into a merger or consolidation with a Federal savings association when the resulting institution will be a Federal savings association shall comply with the requirements of 12 U.S.C. 214a and 12 U.S.C. 214c as if the Federal savings association were a state bank. However, for these purposes the references in 12 U.S.C. 214c to “law of the State in which such national banking association is located” and “any State authority” mean “laws and regulations governing Federal savings associations” and “Office of Thrift Supervision,” respectively.

(B) National bank shareholders who dissent from a plan to merge or consolidate may receive in cash the value of their national bank shares if they comply with the requirements of 12 U.S.C. 214a as if the Federal savings association were a state bank. The OCC conducts an appraisal or reappraisal of the value of the national bank shares held by dissenting shareholders only if all parties agree that the determination will be final and binding. The parties shall also agree on how the total expenses of the OCC in making the appraisal will be divided among the parties and paid to the OCC. The plan of merger or consolidation must provide, consistent with the requirements of the Office of Thrift Supervision, the manner of disposing of the shares of the resulting Federal savings association not taken by the dissenting shareholders of the national bank.

(h) *Interstate combinations.* A business combination between banks under the authority of 12 U.S.C. 1831u(a)(1) must satisfy the standards and requirements and comply with the procedures of 12 U.S.C. 1831u and the procedures of 12 U.S.C. 215 and 215a as applicable. For purposes of this section, the acquisition of a branch without the acquisition of all or substantially all of the assets of a bank is treated as the acquisition of a bank whose home state is the state in which the branch is located.

(i) *Expedited review for business reorganizations and streamlined applications.* A

filing that qualifies as a business reorganization as defined in paragraph (d)(2) of this section, or a filing that qualifies as a streamlined application as described in paragraph (j) of this section, is deemed approved by the OCC as of the 45th day after the application is received by the OCC, or the 15th day after the close of the comment period, whichever is later, unless the OCC notifies the applicant that the filing is not eligible for expedited review, or the expedited review process is extended, under § 5.13(a)(2). An application under this paragraph must contain all necessary information for the OCC to determine if it qualifies as a business reorganization or streamlined application.

(j) *Streamlined applications.* (1) An applicant may qualify for a streamlined business combination application in the following situations:

(i) At least one party to the transaction is an eligible bank, and all other parties to the transaction are eligible banks or eligible depository institutions, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the total assets of the target institution are no more than 50 percent of the total assets of the acquiring bank, as reported in each institution's Consolidated Report of Condition and Income filed for the quarter immediately preceding the filing of the application;

(ii) The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting national bank will be well capitalized immediately following consummation of the transaction, and the applicants in a prefiling communication request and obtain approval from the appropriate district office to use the streamlined application; or

(iii) The acquiring bank is an eligible bank, the target bank is not an eligible bank or an eligible depository institution, the resulting bank will be well capitalized immediately following consummation of the transaction, and the total assets acquired do not exceed 10 percent of the total assets of the acquiring national bank, as reported in each institution's Consolidated Report of Condition and Income filed for the

quarter immediately preceding the filing of the application.

(2) When a business combination qualifies for a streamlined application, the applicant should consult the Manual to determine the abbreviated application information required by the OCC. The OCC encourages prefiling communications between the applicants and the appropriate district office before filing under paragraph (j) of this section.

#### § 5.34 Operating subsidiaries.

(a) *Authority.* 12 U.S.C. 24(Seventh) and 93a.

(b) *Licensing requirements.* A national bank generally shall submit an application and obtain prior OCC approval to establish or commence new activities in an operating subsidiary. In certain circumstances, a national bank need only notify the OCC after it has established or commenced specified activities in an operating subsidiary.

(c) *Scope.* This section sets forth authorized activities and application and notice procedures for the establishment and operation of an operating subsidiary by a national bank.

(d) *Standards and requirements—(1) Authorized activities.* A national bank may establish or acquire an operating subsidiary to conduct, or may conduct in an existing operating subsidiary, activities that are part of or incidental to the business of banking, as determined by the Comptroller of the Currency, pursuant to 12 U.S.C. 24(Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority.

(2) *Qualifying subsidiaries.* For purposes of this section, an operating subsidiary in which a national bank may invest includes a corporation, limited liability company, or similar entity if the parent bank owns more than 50 percent of the voting (or similar type of controlling) interest of the subsidiary; or the parent bank otherwise controls the subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest of the subsidiary. However, the following subsidiaries are not operating subsidiaries subject to this section:

(i) A subsidiary in which the bank's investment is made pursuant to spe-

cific authorization in a statute or OCC regulation (e.g., a community development corporation subsidiary under 12 CFR part 24); and

(ii) A subsidiary in which the bank has acquired, in good faith, shares through foreclosure on collateral, by way of compromise of a doubtful claim, or to avoid a loss in connection with a debt previously contracted.

(3) *Examination and supervision.* Each operating subsidiary is subject to examination and supervision by the OCC. In conducting activities authorized under this section, unless otherwise provided by statute or regulation (including paragraph (f) of this section), applicable provisions of Federal banking law and regulations pertaining to the operations of the parent bank shall apply to the operations of the bank's operating subsidiary. If, upon examination, the OCC determines that the subsidiary is operating in violation of law, regulation, or written condition, or in an unsafe or unsound manner or otherwise threatens the safety and soundness of the bank, the OCC will direct the bank or operating subsidiary to take appropriate remedial action, which may include requiring the bank to divest or liquidate the subsidiary, or discontinue specified activities.

(4) *Consolidation of figures.* Pertinent book figures of the parent bank and its operating subsidiary shall be combined for the purpose of applying statutory limitations when combination is needed to effect the intent of the statute, e.g., for purposes of 12 U.S.C. 56, 60, 84 and 371d. However, in determining compliance with statutory limits based on regulatory capital, the bank shall make any reductions in regulatory capital required by paragraph (f) of this section.

(e) *Procedures—(1) General—(i) Application required.* (A) Except as provided in paragraphs (e)(2) and (e)(4) of this section, a national bank that intends to acquire or establish an operating subsidiary, or to perform a new activity in an existing subsidiary, shall submit an application to, and receive approval from, the OCC before acquiring or establishing the subsidiary, or commencing the new activity. The application must include a complete description of the bank's investment in the